

General Information Letter: Gain from distribution of stock excluded from federal adjusted gross income of an individual is excluded from Illinois base income.

February 13, 2003

Dear:

This is in response to your letter dated February 3, 2003 in which you request a letter ruling. The nature of your request and the information you have provided requires that we respond with a General Information Letter (GIL). A GIL is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be accessed from the Department's web site at [www.Iltax.com](http://www.Iltax.com).

In your letter you have stated the following:

My wife, Mrs. Z, is a former employee of COMPANY1 and, as such, is also a participant in the COMPANY1 Long Term Savings and Security Plan (LTSSP).

On June 1, 2002, COMPANY1 effected a spin-off of COMPANY2 – its former microelectronics business. Following the spin-off, COMPANY2 became a fully separate, publicly traded company. As part of the spin-off, holders of COMPANY1 common stock as of the record date of the distribution (May 3, 2002) received shares of COMPANY2 Class A and B stock based on a distribution formula. Specifically, my wife's LTSSP account received a distribution of COMPANY2 shares since she has an investment balance in two different LTSSP funds which hold COMPANY1 common stock. I understand that the distributed COMPANY2 shares were sold and the proceeds were used to purchase COMPANY1 stock within the two different LTSSP funds.

According to a COMPANY1 Information Statement dated May 13, 2002, they received a ruling from the Internal Revenue Service that the distribution of the COMPANY2 common stock is tax-free for U.S. Federal income tax purposes to COMPANY1 and to its shareowners to the extent that the shareowners receive COMPANY2 common stock. Specifically, they state:

"We have received a private letter ruling from the Internal Revenue Service, or the IRS, to the effect that our distribution of shares of the COMPANY2 Class A and Class B common stock to our common shareowners in connection with the spin-off and our exchange of shares of COMPANY2 Class A common stock for our debt in a debt for equity exchange will qualify as a tax-free transaction under Sections 355 and 368(a)(1)(D) of the Internal Revenue Code, or the Code. The ruling provides that for U.S. Federal income tax purposes:

- our common shareowners will not recognize gain or loss on the receipt of shares of COMPANY2 Class A and Class B common stock in the spin-off; and
- we will not recognize gain or loss as a result of the spin-off or the debt for equity exchange.

Although the private letter ruling is generally binding on the IRS, the continuing validity of the ruling is subject to factual representations and assumptions. We are not aware of any facts or circumstances that would cause those representations or assumptions to be untrue."

A call to the COMPANY1 Savings Plan Service Center (@800-410-4015) on January 31, 2003 confirmed that COMPANY1 still perceives the distribution associated the [sic] COMPANY2 spin-off to have no implications with respect to Federal income tax.

Please provide me with a written response (mailed to the address shown above) stating whether or not the Illinois Department of Revenue also views the distribution of the COMPANY2 common stock as a tax-free transaction for Illinois state income tax purposes. If the Illinois Department of Revenue views this distribution to be taxable, please state how the taxable income should be calculated and where it should be reported on Form IL-1040.

## **RULING**

Under Section 203(a) of the Illinois Income Tax Act ("IITA" ; 35 ILCS 5/101 *et seq.*), the computation of an individual's Illinois base income begins with the individual's federal adjusted gross income (AGI). AGI is then adjusted by certain statutorily prescribed addition and subtraction modifications. Under this scheme, items that are neither included in AGI nor the subject of an addition modification are not taxable for Illinois income tax purposes.

The IITA does not contain an addition modification with respect to gain not recognized under Internal Revenue Code Section 355. Thus, to the extent that income on the distribution of COMPANY2 stock is not recognized for federal income tax purposes, the distribution is not taxable for Illinois income tax purposes.

As stated above, this is a GIL. A GIL is does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you have further questions regarding this GIL, please call (217) 782-7055. If you have additional questions regarding Illinois income tax laws, please visit the Department's web site at [www.Iltax.com](http://www.Iltax.com).

Sincerely,

Brian L. Stocker  
Associate Counsel (Income Tax)